



1 the United States Citizenship and Immigration Services (USCIS) on August 18, 2005. The  
2 USCIS has yet to adjudicate Plaintiff's I-485 application. The plaintiff filed an action, pro se, on  
3 November 1, 2007, seeking an order from this Court directing USCIS to adjudicate his I-485  
4 application. Counsel for Plaintiff filed a Notice of Appearance on January 11, 2008.

### 5 **3. Legal Issues**

6 1. Whether this Court should dismiss the plaintiff's action for failure to state a claim and for lack  
7 of subject matter jurisdiction.

8 2. Whether the delay in the adjudication of Plaintiff's I-485 application is unreasonable.

### 9 **4. Motions**

10 No motions have been filed. If necessary, the parties shall file cross-motions for summary  
11 judgment.

### 12 **5. Amendment of Pleadings**

13 No parties, claims or defenses are expected to be added or dismissed.

### 14 **6. Evidence Preservation**

15 The parties do not have any evidence that falls within this category.

### 16 **7. Disclosures**

17 The parties believe that review will be confined to the administrative record and thus the  
18 disclosure requirements of Fed. R. Civ. P. 26 do not apply.

### 19 **8. Discovery**

20 The parties do not intend to take any discovery in this case.

### 21 **9. Class Actions**

22 N/A

### 23 **10. Related Cases**

24 The parties are not aware of any related case or cases.

### 25 **11. Relief**

26 The plaintiff asks this Court to direct the USCIS to adjudicate his I-485 application within 60  
27 days of receiving the Court's order.

### 28 **12. Settlements and ADR**

1 On February 12, 2008, the parties filed a request to be excused from the formal ADR process for  
2 this case. At this time, the parties believe that there is a possibility of settling this case in light  
3 of the following facts:

- 4 1. On February 4, 2008, Michael Aytes, Associate Director of Domestic Operations for  
5 the USCIS, issued an Interoffice Memorandum ("Aytes Memorandum") that  
6 established revised guidance on how the USCIS should process I-485 applications  
7 that are waiting for FBI name check clearance.
- 8 2. This revised guidance dictates that if an I-485 application is otherwise approvable,  
9 and the FBI name check has been pending for more than 180 days, the USCIS shall  
10 grant approval for that application.
- 11 3. At this time, both parties believe that Plaintiff's case falls into the category  
12 contemplated by the Aytes Memorandum, and there is a possibility that Plaintiff's  
13 I-485 case may be resolved shortly.

14 Therefore, to allow more time for the USCIS to determine Plaintiff's eligibility for I-485  
15 approval based on the Aytes Memorandum, the parties respectfully request that the Court hold  
16 this case in abeyance for a period of 60 days, until April 14, 2008. During this period, if  
17 Plaintiff's I-485 application is decided upon, the parties shall file a stipulated dismissal. If not,  
18 the parties shall file an appropriate report. If the plaintiff wishes to proceed, the parties shall file  
19 cross-motions for summary judgment based on the schedule below.

### 20 **13. Consent to Magistrate Judge for All Purposes**

21 The parties have already consented to proceed before a Magistrate Judge.

### 22 **14. Other References**

23 The parties do not believe that this case is suitable for reference to binding arbitration, a special  
24 master, or the Judicial Panel on Multidistrict Litigation.

### 25 **15. Narrowing of Issues**

26 The parties do not believe that the issues can be narrowed by agreement or by motion, and do not  
27 have suggestions to expedite the presentation of evidence at trial, and any request to bifurcate  
28 issues, claims or defenses.

**16. Expedited Schedule**

If the parties are unable to settle this case within the 60-day abeyance period, the parties believe this case can be resolved on cross-motions for summary judgment.

**17. Scheduling**

The parties will notice and move for summary judgment with the following proposed due dates:

Parties' cross-motions for summary judgment: April 22, 2008

Parties' opposition motions: May 6, 2008

The Parties respectfully request that the Court take this matter under submission based on the above motions and that no summary judgment hearing be held for this case. Should the Court deem that a hearing is necessary, the parties propose a summary judgment hearing date of May 20, 2008.

**18. Trial**

The parties do not anticipate the need for a trial in this case.

**19. Disclosure of Non-Party Interested Entities or Persons**

The Plaintiff has filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-16.

**20. Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter**

None.

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1 Respectfully Submitted By Counsel for Both Parties:

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3 Dated: February 12, 2008

\_\_\_\_\_/s/  
Justin G. Fok<sup>1</sup>  
Law Offices of Jean D. Chen  
Attorney for Plaintiff

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6  
7 Dated: February 12, 2008

\_\_\_\_\_/s/  
Ila C. Deiss  
Assistant United States Attorney  
Attorney for Defendants

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13 **ORDER**

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15 The Case Management Statement and Proposed Order are hereby adopted as the Case  
16 Management Order for the case and the parties are hereby ordered to comply with this order.

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20 Dated: \_\_\_\_\_

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Howard R. Lloyd  
United States Magistrate Judge

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28 <sup>1</sup> I, Justin Fok, hereby attest that I have on file all holograph signatures for any signatures  
indicated by a “conformed” signature (/s/) withing this efiled document.